



# ERIC J. RICHEY

## WHATCOM COUNTY PROSECUTING ATTORNEY

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Erik K. Sigmar, Chief Criminal Deputy  
Dona Bracke, Assistant Chief Criminal Deputy  
Christopher Quinn, Chief Civil Deputy  
Laura Singletary, Administrative Manager

July 11, 2024

Whatcom County Council

Re: Whatcom County Council's Request to Contract with Outside Counsel

Whatcom County Councilmembers:

On July 9<sup>th</sup>, 2024, Council passed resolution RES 2024-035 requiring the County to bring a declaratory judgment action in the Superior Court relating to proposed Initiative 2024-01, colloquially known as the repeal of Proposition 5. (the full text of the ordinance has been attached to this letter.) The Whatcom County Prosecuting Attorney has a potential conflict of interest that precludes this office from pursuing the action requested by the Council. The potential conflict exists for two reasons: first, the Whatcom County Prosecuting Attorney, Eric Richey, was a known proponent of Proposition 5; and second, the Whatcom County Prosecuting Attorney's office has continuing duties to prepare materials to be published in the voter's pamphlet for the initiative and to advise the Auditor on preparing appropriate election materials in an impartial manner. These circumstances create a potential conflict which could create the appearance of partiality in carrying out his duties to advise the Auditor in the preparation of election materials.

When a prosecutor's duties require the representation of two different public bodies with adversarial positions in the same case, there is a conflict of interest that requires the prosecutor to withdraw, or to decline the representation of one client. *Westerman v. Cary*, 125 Wn.2d 277, 300, 892 P.2d 1067, 1079 (1994). (Citing Washington State Bar Ass'n Ethics Opinions, No. 59 (1959), (withdrawn when the Rules of Professional Conduct were substantially amended in 2006), *State v. Heaton*, 21 Wash. 59, 60, 56 P. 843, 844 (1899)).

Where the prosecuting attorney is unwilling or unable to perform a legally authorized or mandated duty, the county legislative authority may employ or contract with an attorney to perform such duty. RCW 36.32.200; *State ex rel. Drummond v. Banks*, 187 Wn.2d 157 (2016).

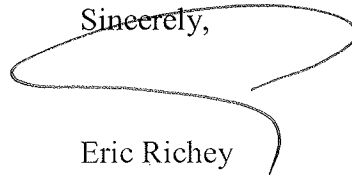
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However, the contract must be reduced to writing, approved by the presiding superior court judge of the county, and may not exceed two years in duration. RCW 36.32.200.

In ordinance AB 2024-466, the County Council requests that outside counsel be approved in the event the Prosecutor is not able or not willing to do take the requested action. The purpose of this letter is to inform the Superior Court of the potential conflict and to convey the request of the Council for an attorney to advise them and proceed with a declaratory judgment action, if appropriate.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Richey". The signature is enclosed within a large, irregular, hand-drawn oval shape that also serves as a decorative flourish.

Eric Richey  
Whatcom County Prosecuting Attorney